No. 24-5894

IN THE

SUPREME COURT OF THE UNITED STATES

Robert S. Pierce — PETITIONER
(Your Name)

vs.

Jim Salvorsen, Attorney General
for the State of Montana — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

9th Circuit Court of Appeals
Federal District Court for the State of Montana-Missoula Division
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert S Pierce AO# 3013080
(Your Name)

700 Conley Lake Road
(Address)

Deer Lodge, Mt 59722
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

This case presents an Important Nationwide issue concerning whether State and Federal Courts can operate by void judgement and no authority in to maintain convictions in violation of Federal and State Rule of Civil procedure Rule 10(c) to keep those wrongfully convicted incarcerated while disregarding Federal Laws as settled by the Supreme Court, and conflicts with or departs from other States District Courts or Courts of Appeal and has far departed from accepted and usual course of Judicial proceedings.

1st: Did the District Court and 9th Circuit err by deciding to not rule on the merits by not properly examining Rule 10(c) records that were attached to the Habeas petition, when denying the Habeas or denying the Certificate of appealability?

2nd: Has the Supreme Court overturned it's own president in Franks v Deleware 438 US 154, 985 S.Ct 2674, 57 L.Ed.2d 667, 1978; Mooney v Holohan 294 US 103, 112, 79 L.Ed.2d 794, 55 S.Ct 340(1935); Napue v Illinious 360 US 264, 269, 3 L.Ed.2d 1217, 79 S.Ct(1950): or Alcorta v Texas 355 US 28, 2 L.Ed.2d 9, 78 S.Ct 103(1957); where it now allows a different standard of review for State prisoners as compared to Federal prisoners who are similarly situtated, where the Court allows the conviction of someone on the known use of perjured testimony?

3rd: Does the Supreme Court decision in United States v Johnson 1946, 327 US 106, 112, 66 S.Ct 464, 90 L.Ed 562, that this Court cannot second guess a trier of fact, to be handled differently for State prisoners and federal prisoners and does hornbook law apply differently between state and federal prisoners?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

2:19-CV-00058-BMM-KLD US District Court for the state of Montana-Missoula Division.

23-4346 - 9th circuit Court of Appeals. Judgement entered 7/18/2024

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[X] reported at Pierce v Salmonsen 2023 US Dist Lexis 223932; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 28, 2024.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 18, 2024, and a copy of the order denying rehearing appears at Appendix E.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Franks v Deleware 438 US 154

Napue v Illinious 360 US 264

Schlup v Delo 513 US 298

Gallick v Baltimore & Orr Co 372 US 108

Alcorta v Texas 355 US 28,

Mooney v Holohan 294 US 103

United State v Bagley 473 US 667

4th Amendment-The people to be secure in their person, house, papers and effects, shall not be violated and no warrent shall issue but upon probable cause, supported by oath or affirmation.

5th Amendment- Nor shall any person be subject for the same offense to be twice in jeopardy of life or limb.

6th Amendment- In all criminal prosecutions, the accused shall enjoy the right to a speedy, public trial by an impartial jury of the state and district wherein the crime shall have been committed

7th Amendment-The right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise examined in any court.

8th Amendment-Nor cruel and unusual punishment inflicted.

13th Amendment-Neither slavory nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted.

14th Amendment-Nor shall any State deprive any person of life, liberty or property without due process of law.

28 USC 1651(a) The Supreme Court and all Courts established by act of congress may issue all writs necessary or appropriate in aid of their respective jurisidictions and agreeable to the usage and principles of law.

28 USC 2254(A) The Supreme Court, a justice, thereof, or a district Court shall entertain an application for writ of habeas corpus on behalf of a person in custody, pursuant to the judgement of a State Court only on the grounds that he is in custody in violation of the constitution or laws ot treaties of the United States.

28 USC 1254 Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:(1) by writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition or judgement or decree.

STATEMENT OF THE CASE

In Order to follow the reasoning of the Federal Court, we must look back on what happened in the state Court:

HISTORY OF STATE PROCEEDINGS

On June 5[illegible], 2017, the 3rd Judicial District court issued summary judgement on the State claims in civil action DV-15-99, that were handed down from Federal case CV-15-071-BU-BMM-JCL.(Doc 5 at 3, line 20)

On July 6, 2017, Petitioner filed a post conviction relief petition in the 3rd Judicial district court under DV 17-59. The State was ordered to respond, also on July 6, 2017 and before August 4, 2017 so the 3rd Judicial District Court knew, the merits in the postconviction.(Doc 5 at 3, line 32.)

The State issued the notice to the Court of the Attorney Generals response dated July 11, 2017 and on July 28, 2017, the State requested an extension due to the voluminous nature and to seek a Gillham Order to investigate claims against trial Counsel.(Doc 5 at 3, line 35.)

The 3rd Judicial District Court then sent the post conviction petition to the sentencing judge in the 2nd Judicial District Court.

After the post conviction was denied, the Clerk of the 3rd Judicial District Court confimed: "Judge Dayton informed me if the documents are too large to scan and are available for review in the file, to follow the Clerk of Court's procedure, which is we do not scan vast exhibits. The public and or Court personnel are able to view and and all documents that are not marked confidential. If the case is appealed, we send the documents by USPS so as the Court will be able to view a complete file.(Doc 5 at 14, line 9)

Because to Clerk of Court failed to provide the 2nd Judicial District Court with the records that were vast exhibits. The Attorney General capitolized on this and claimed MCA 46-21-104(1)(c) was not followed. The 2nd Judicial District Judge then entered: In the instant case, as set forth below, the court finds the petitioner failed to state a claim upon which relief can be granted. He failed to satisfy his burdon of identifying all facts supporting his claims for relief, together with affidavits, records, or other evidence establishing the existance of such facts. The majority of the petitioners claims are based on mere speculation, rather than on facts. Thus dismissal of the petition for post

conviction relief is appropriate persuant to Section 46-21-104(1)(c). (Doc 5 at 15, line 31)

On July 13, 2018, a notice of appeal was filed for the order dismissing the post conviction petition and a notice was approved by the Supreme Court.(Doc 5 at 4, line 13)

On January 30, 2019 The State Attorney General in DA 18-0404, filed: brief of appellee, where on page 30, a footnote claimed: "The State has scanned the petition and documents it received, which appear to be the same as the petition in the District Court file, and it contains 459 pages(Doc 5 at 10, line 8).

On January 11, 2019 the Supreme Court ordered the District Court Records for the criminal case DC 12-29 and on January 25, 2019, the Supreme Court recieved records from DA 14-0071, consisting of transcripts for April 22, 23, 24, 25 and December 10, 2013.(doc 5 at 17 & 18, line 35 & 1-3).

So the Montana Supreme Court had the above DA 14-0071 records, the DA 17-0472 records, 459 post conviction records and approximately 225 documents attached to the opening brief in DA 18-0404, Because Mr. Pierce questioned how the District Court claimed to have no records, appeal counsel claimed 459 records, Chief Justice Mike McGrath simply claimed that all the above records, combined, did not meet the requirements of 46-21-104(1)(c). Some of these records were then used in a State Habease Corpus filed in OP-19-0552 and issued their order on October 8, 2019.(Doc 5 at 18, line 4)

On March 28, 2019 the Montana Supreme Court held: In his brief, Pierce assumes that because the Clerk of Court declined to scan his volumious exhibits into the Court's Electronic record, they were not considered by the court. This assumption is incorrect. Evidenced from the Clerk to Pierce the documents did not need to be scanned in order for the court to examine them.(doc 5 at 15, line 8).

This Supreme Court ruling conflicks with Doc. 25, page 9, footnote 5 of CV-2:19-058-BMM-KLD(considering Pierce was dealing with 2 district Courts, in two counties, in two jurisdictional District Courts): The version or the petition for post conviction relief scanned into the district court record contains only the petition and is 22 pages long. Pierce filed over 400 pages of exhibits with the petition. According to the case register, the exhibits were not scanned due to volume(Doc25, page 9, footnot 5)(See United States v Ritchie 342 F.ed 903, 908(9th cir 2003)(Certain written instruments attached to the pleading may be considered part of the pleading. See Fed.R. Civ.P.10(c). Even if a

document is not attached to the complaint.)

On March 28, 2019, the Montana Supreme Court affirmed the denial of the postconviction. See Pierce v State of Montana 2019 Mt 124.(Doc 5 at 4, line 23)

FEDERAL COURT HANDLING OF EXHIBITS FOR RULE (10)(c)

Pierce' Habeas Corpus was filed on 11/21/2019(Doc 1), Amended on 1/8/2020 (Doc 5) and denied on 12/15/2023(Doc 53). See 2:19-058-BU-BMM-KLD.

When Pierce filed his original Amended Petition(Doc 5), the case register dictated: Amended Petition for writ of habeas Corpus(143 pgs), filed by Robert S. Pierce(attacments #1 appendix A-D(4pgs), #2 Certificate of Service,(1pg), #3 Declaration(1 pg), #4 exhibit letter to Tim Fox(2pgs), #5 affidavit(2pgs), Unscanned voluminous exhibits identified in appendix maintained on file in the pro se dept.(TAG)(entered 1/8/2020).

Requirement in 28 USCS 2243 that Courts act "forthwith" requires application for habeas corpus to be given priority in court calenders. Ruby v United States 341 F.2d 585, 9 Fed.R.Serv.2d(Callaghan) 81 A, 22, 3, 1965 US App Lexis 6567.

A Writ of mandamus and/or Prohibition for extraordinary delay was filed as 23-3362. The Ninth Circuit Court of Appeals issued and order ending the Writ of Mandamus and/or Prohibition for extraordinary delay on 12/14/2023.

The Habeas Corpus Amended Petition(Doc 5) was dismissed on 12/15/2023. Pierce filed Notice of Appeal on December 21, 2023(Doc 54).

On 12/23/2023, the Ninth Circuit filed(Doc 1) in 23-4346: A copy of your Notice of appeal/Petition filed in 2:19-CV-58-BMM-KLD has been received in the Clerk's office of the United States Court of appeals for the Ninth Circuit.

The following week, Pierce filed a Motion to designate Records to the 9th Circuit(Doc 55).

On 1/3/2024, Judge Brian Morris filed an order in (doc 56): Petitioner Robert Pierce filed a petition for writ of Habeas Corpus on November 21, 2019(Doc 1), along with the petition, Pierce sought to file voluminous documents, via a notice sent on December 19, 2019, the Court informed Pierce that the documents could not be submitted through the Montana State Prison E-filing program, and

instead needed to be mailed to the court. Pierce complied and the unscanned exhibits have been maintained in the Pro Se Department, within the Clerk's Office in the Russell Smith Courthouse in Missoula, Montana(See Note: Doc-5).

Within the box containing the exhibits are 42 individual manila envolopes, each envolope contains a different number of pages, but they average between 50 - 70 pages of exhibits. By subsequent order, the Court directed the State of Montana to file various documents from Pierce's State Court Proceedings (See 23 @ 3-5). The Court denied and dismissed Pierce's Petition on December 15, 2023(Doc 52). Judgement was entered the same day(Doc 53). The following week Pierce filed a motion for an order to designation of records on appeal (doc 55). Pierce seeks an order from the Court designating the following documents as the record on appeal. 1) all pleadings related to his 28 USCS 2254 petition, 2) the voluminous exhibits maintained in the pro se department; 3) All pleadings, exhibits and correspondence filed in the case register(Doc 55 @ 55-1).

It appears that Pierce wants to ensure that the voluminous exibits provided to the Court are part of the record(Fed.R. Civ.P. 10(c));(a statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of written instrument that is an exhibit to a pleading is a part of the pleading for all purposed). As the first and third set of documents referenced are already part of the evidence record. The Court will grant Pierce's motion. Accordingly IT IS ORDERED. Pierce's motion requesting that the voluminous documents maintained in the pro se department be designated as part of the Record in this matter(Doc 55) is granted. Dated this 3rd day of January, 2024.

2 The Court must accept all well-plead factual allegations as true, but need but need not contain "detailed factual allegation" it must provide more than an unadorned, the-defendant-unlawfully-harmed-me accusations. Ashcroft v Iqbel 556 US 662, 678-79, 129 S.Ct 1957, 173 L.Ed.2d 868.

On 1/5/2024 the Case Register was then modified to show that:(Additional attachments added on 1/5/2024: #6 Letter, #7 exhibits 1-10(appendix A, Doc 5, #1a - 10); #8 Appendix 11-20(Appendix A & B, doc 5, #11-20); #9 Appendix 21-30 (Appendix B & C, #21 - 30); #10 Appendix 31-42(Doc 5 C & D appendix 31 - 42); #11 State Court Docket(TAB) modified on 1/5/24 to attach unscanned voluminous appendices(A,B,C,D)(TAG) entered 1/9/2020).

Equitable life Ins Co v Halsey Stuart & Co 312 US 410, 61 S.Ct 623, 85 L.Ed.2d 920, 1941 "It is the duty of one selling Securities who attempts to state truthfully what he actually tells, but also not to suppress any facts within his knowledge, which will materially change or alter the effect of the facts actually stated, to tell less than the whole truth may constitute a false fraudulent representation, a partial and fragmented disclose of certain facts conserning an issue, accompanied by the **willful concealment** of material facts actually stated, is as much a **fraud** as an actual positive misrepresentation.

Willful concealment of material facts has always been considered as evidence of Guilt. Ashcraft v Tennessee 327 US 274, 66 S.Ct 544, 90 L.Ed, 667.

On June 28, 2024 in 23-4346, it was order: Michelle Friedland, Salvador Mendoza Jr. The request for Certificate of Appealability(Doc 1-08) is denied because appellant has not shown that "jurists of reason would find it debateable whether the District Court was correct in it's procedural ruling. Slack v McDonald 529 US 473, 484(2000). See also 28 USC 2253(c)(30): Gonzolas v Thaler, 565 US 134, 140-41(2012); Miller v Cockrell 537 US 322, 327(2003). All pending motions are denied as moot.

On July 2, 2024, Pierce filed a petition for panel rehearing and/or rehearing enbanc.

On July 18, 2024, the 9th Circuit Court of Appeals: Sidney R. Thomas, P. Barry Silerman, Appellant has filed a combined Motion for reconsideration and a motion for reconsideration enbanc(Docket entry Nos: 13 and 14) the motion for reconsideration is denied and the motion for reconsideration enbanc is denied on behalf of the court. No futher filings will be entertained in this matter.

Obviously, for the District Court Judge to dismiss the habeas Corpus(Doc 5) for being conclusory and speculative(Doc 53 at 12), he did a "look through" to

the state Courts that failed to follow Mt. R. Civ. P. Rule 10(c) also.

The 9th Circuit receiving the Notice of appeal and petition on 12/23/24 did not have the benefit of the "voluminus exhibits attached and incorporated by reference on 1/5/2024 and applied the Habeas by Fed.R.Civ.P. Rule 10(c) as part of the Record on appeal.

The Federal District Court erred in dismissing without a hearing, the application for habeas corpus and satisfying itself that, it was a proper case for dismissal of petitioner's application without hearing, but instead relying on facts and conclusions stated in the opinion of State Supreme Court. United States ex rel Jennings v Ragen 358 US 276, 79 S.Ct 321, 3 L.Ed.2d 296, 1959 US Lexis 1659(1958).

It appears from the record before us that the District Court dismissed petitioners application without making any examination of the record of proceeding in the State Courts...We think that the District Court erred in dismissing this petition without first satisfying itself, by an appropriate examination of the of the State court record.

Because the deceiptful District judge **willful concealment** of the voluminous records from January 8, 2020 filing, to January 5, 2024 and **willfully concealing** the voluminous records from the 9th Circuit Court of Appeals, and the **willful concealment** of the material facts changed the effect of the facts actually stated, it is a **fraud** and actual positive misrepresentation, and because **fraud** renders a judgement void, under the decision in In Re Diversey Building Corp. 86 F.2d 456, when the Supreme Court denied Certiorari 300 US 662 and In Re Nine North Church St Inc, 82 F.2d 186, 188 the Federal Court was wholly [illegible] without jurisdiction of the subject matter of this quaranty and it's orders and decree pertaining to the cancellation of the quaranty are absolutely void and subject to collateral attack. Stroll v Gottlieb 305 US 165, 59 S,Ct 134, 83 L.Ed 104, 1938.

If fraud renders Judgement void, and a void thing is no thing. It has no legal effect whatsoever, and no right whatever can be obtained under it or grow

out of it. In law, it is the same thing as if the "void thing" has never existed. Mclain v McLain 2016 US Dist Lexis 184436

As proof that the District Court Judge only used the State records provided with (doc 25) we can examine (doc 52, page 32); "as to the remainder of this claim, the PRC court found that Pierce offered nothing more than his own conclusory statements in support of his claim for actual innocence. The Montana Supreme Court affirmed this finding. In this court, similarly, Pierce's interpetation and conclusory statements regarding preceived discrepancies between M.R. and her mothers statements and purported witness tampering does not constitute new reliable evidence.

In (Doc 52 @ 42) the court noted: It is not the role of this court to reasses credibility judgements or weigh potentially conflicting testimony unless the underlying decision "was based on an unreasonable determination of the facts." 28 USC 2254(b) Pierce has not demonstrated that the Montana State Court was unreasonable. This claim also fails the deferential standard of review."

See 28 USC 2254(d)(2), a finding that the State Court made an unreasonable determination of the facts 'does not suffice to warrent Habeas relief under 2254 (d)(2)' Rather, habeas relief may be afforted to a State prisoner "only if his confinement also' violates federal law. Wilson v Corcoran 562 US 1, 5-6(2000) (per curiam); See also Rice v Collins 546 US 337, 338-39(2006).

When matter outside the pleading are presented(ie Doc 21) to and not excluded by the Court...then both parties must have the opportinuty to present all the material that is pertainent to the motion.

There are two exceptions to this rule, the incorporated-by reference doctrine and Judicial Notice under Fed.R.Evid.P. Rule 201. Both of these procedures permit District Courts to consider materials outside a complaint, but each does so for different reasons and in different ways. We address each serialim. Khoja v Orexigan Theraputics Inc 899 F.3d 988, 218 US App Lexis 22371(9th Cir.)

In United States v Ritchie 342 F.3d 903, 908(9th Cir 2003)(A court may consider certain materials - documents attached to the complaint, documents incorporated-by-reference in the complaint of matters of Judicial notice. Fed. R.Civ.PP. Rule 10(c)(A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes) The Court is not required to accept as true allegations in the complaint that contradict exhibits attached to the complaint or matters properly subject to judicial notice of allagations that are merely conclusory, unwarrented deductions of facts, or unreasonable inferences.

Claim #2; Lack of probable cause and prosecutors known use of perjury.

When did the Supreme Court disallow Frank v Deleware 438 US 154; Napue v Illinois 360 US 264 and Gallick v Baltimore & Orr Co 372 US 108, for the 9th Circuit and the Montana Federal District Court, for those State prisoners that were wrongly convicted by the corcupt Montana Justice system?

In Pierce v Barkell, 2016 US Dist Lexis 117592: Cv 15-71-Bmm-JCL, decided 31 August, 2016: Judge Brian Morris issued an order: Pierce's 1983 claims:

> All of Pierce's 1983 claims are grounded on an assertion that the Defendants engaged in unconstitutional conduct which resulted in his criminal convictions. Pierce challenges 1) the vercity of the witness statements on which the criminal investigation and prosecution proceeded; 2) the intrgity, trustworthiness and accuracy of the investigation conducted by Sather, Barcley and Barkell and 3) the propriety of the investigative procedures and techniques employed by Sather, Barcley and Barkell. Pierce's success on any of his 1983 claims necessarily would imply that one or both of his convictions are invalid."

In Pierce v Salmonsen 2023 US Dist Lexis 223932, CV 19-58-BMM-KLD, decided on 15 December 2023. Judge Brian Morris was provided with clear and convincing evidence that developed in Pierce v Barkell, 2016 US Dist Lexis 117592 and attached as exhibits to the Habeas Petition in Pierce v Salmonsen 2023 US Dist Lexis 223932, that culminated in an actual Innocence claim when Pierce filed a Motion for fundamental miscarriage of Justice(Doc 37), [illegible]

According to Schlup v Delo 513 US 298, 324, 327, 115 S.Ct 851(1995): To make the requiste showing of actual innocence, it must be shown it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence. The question is not whether House was prejudiced at his trial because the jurors were not aware of the new evidence, but whether all the evidence, considered together proves House was actually innocent, so that no reasonable juror would have voted to convict him. House v Bell 547 US 518, 165 L.Ed.2d 1, 126, S.Ct 2064(2006).

A writ of Mandamus and/or prohibition for extraordinary delay was filed

as 23-3362 on 11/7/2023, the 9th Circuit Court of Appeals issued an order ending the writ of mandamus and/or prohibition on 12/14/2023.

The Habeas Corpus petition in 2:19-CV-58-BU-BMM-KLD was filed on 1/8/2020, amended and denied on 12/15/2023, which was denials of the Amended Petition(Doc 5); Motion for order(Doc 40); The rule 60(b) motion(Doc 42); The Motion to appoint counsel(Doc 49) and a Certificate of Appealability, and claimed (Doc 54, page 54) Pierce is unable to establish a single constitutional violation.

See Marcuso v Olivarez 292 F.3d 939, 957(9th cir 2002)

The first contradiction to this is found in Doc 39, filed 10/14/2022. Judge Brian Morris was informed of where Pierce presented and properly exhausted claim 4, actual innocence, and because the court received document 37,"this court has given Pierce an opportunity to develope his arguement for the Schlup standard: "When there are constitutional errors with new trustworthy(State's primary eyewitness) eyewitnesses accounts that she was told to say she was touched, by her mother, and told to say other things, she admitted to seeing and copying her mothers police reports, admitted to making false statements to officers, investigators and interviewers. Then the charges were based on no probable cause and no subject matter jurisdiction to go to trial, the eyewitness admits to giving perjured testimony at trial, false grooming evidence was used at trial, the jury determined the commission of an offense took place 8 years after the charging documents claimed and 343 days after their verdict and the sentencing judge used false information when issuing an illegal sentence that he had neither jurisdiction nor authority to issue because of the inconsistant special verdict of the jury.

These facts prove actual, factual innocence, The court was asked to incorporate the facts in Claim 4; actual innocence; Claim 6, prosecutors known use of perjury; Document 21: Amended Circumstances of the Crime and Document 37; fundamental miscarriage of justice, and claims 10 and 11 when determining actual innocence."

This "new evidence" came directly from court records generated in Pierce v Barkell 2016 US Dist Lexis 117592 and Brian Morris was judicially stopped for changing his opinion to demonstrate that the petitioner's 2254 petition was "conclusory and speculative".

Pierce filed Document 35 on 6/3/2022, which was a notice of filing an index

of exhibits to corrolate those filed by the petitioner and those filed by the State: and also stated: "In document 27, filed on December 29, 2021, on page 6, the Petitioner listed a comparison of PDf's on file with those received by the State. The enclosed index of exhibits narrows this comparison down to specific records refferenced to in Document 5 and should help the court and opposing counsel in confirming records.

In Document 53 on page 33: Pierce's interpetations and conclusory statements and purported witness tampering does not constitute new reliable evidence.

The district court extensionally pruned out all the perjury statements that came from the civil litigation that Brian Morris presided over in 2015.

Judge Brian Morris received the original "circumstances of the crime" exhibit attached to document 17-3, page 38 of 54 to 54 of 54 an the court referrenced it in it's final dismissal of the Habeas.

This document also referrenced information in documnet 15, page 4, specifically "The paragraphs 3, 4, 5, 6, 7, 9, and 11 have to be excised out of the charging document and replaced with material admissible evidence that proves the same facts." See State v Holt 2006 MT 151, 332 Mont., and the page 8 statement that "The case of DC 12-29, State v Pierce, must be vacated and the charges dismissed."

In document 19, the Honorable Kathleen DeSoto ordered, on page 3: The Court will however, take judicial notice of and review the documents and exhibits filed by Pierce(Doc 15) and (Doc 18).

A major element of document 21 is directly related to a filing in 2:15-CV-00071-BU-BMM-JCL. Document 24, filed on 2/16/2016 and modified on 2/17/2016 to correct document description: disclosure Statement by M.R., and Malissa Raasakka. (See Doc 21-6 at 45 of 47),

The 4th Amendment to the United States Constitution and Article II, Section 11 of the Montana Constitution, both quarentee that no warrent shall issue, but

upon probable cause, supported by oath and or affirmation.

The 5th Amendment, through the 14th Amendment for States and Article II, Section 17 of the Montana Constitution quarentee against the deprivation of life, liberty, or property without due process of law.

When the State filed charges with deliberate falsehood and reckless disregard for the truth and knowledge that they were using false statements to charge and prosecute for a false conviction. The conviction has historically been unable to stand until the Montana Courts have gone crazy with disregarding Constitutinal rights.

The United States Supreme Court articulated in Franks v Deleware 438 US 154, 98 S.Ct 2674, 57 L.Ed.2d, 667, 1978: "In sum, and to repeat with some embellishment what we stated at the beginning of this opinion. There is, of course, a presumption of validity with respect to the affidavit supporting a warrent, to madate an evidentary hearing, the challengers attack must be more than conclusory and must be supported by more than a mere desire to cross examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portions of the warrent affidavit that is claimed to be false.

Dissent by Justice Rehnquist, with whom the CHIEF JUSTICE joins, dissenting:

> It would be extraordinarily troubling in any system of criminal justice if a verdict or finding of guilt. later conclusively shown to based on false testimony, were to result in the incarceration of an accused, not-with-standing this fact, But the Court's reference to the "unthinkable imposition" of not allowing the impeachment of an affiants testimony in view of the many hurdles which the prosecution must surmount to ultimately obtain and retain a finding of guilt in light of the many constitutional safegaurds which surround a criminal accused. The warrent issued on impeachment testimony has, by hypothesis turned up incriminating and admissible evidence, to be considered by the jury at trial.
>
> The fact that it was obtained by reason of an impeachment warrent bears not at all on the innocence or guilt of the accused's right under the fourth and fourteenth Amendments, which have nothing to with guilt or innocence of the crime with which he is changed. Franks v Deleware 438 US 154, 98 S.Ct 2674, 57 L.Ed.2d 667, 1978.

The issues addressed in the following documents were conceded by the State of Montana in Pierce v State 2019 Mt 124 n 396 Mont 548, 2019 Mont Lexis 198 (May 28, 2019), by not reponding and no objection raised, to a second appendix, when filed and the Supreme Court attached it to the opening brief on February 13. 2019. The Attorney General's Office responded on February 1, 2019.

"While this case was pending in this court, Pierce filed a request to file a second sperate appendix pursuant to Rule 12(5), because the motion only concerned the filing of an appendix, and did not impact the claims in his brief, the State did not reply(Doc 5 @ 21, line 19).

On 3/19/2019, the Attorney General Office filed a "reponse to Motion to dismiss the underlying charges." in DA 18-0404, and claimed: Pierce's Motion to dismiss the underlying charges is inappropriate and should be denied without consideration. The proper way to seek reversal of his conviction is through a direct appeal or an appeal of the denial of a petition for postconviction relief. Any issues Pierce has concerning the filing of the charges against him should have been raised in one of those appeals. It appears that the issues he is raising in the Motion to dismiss is related to issues he has raised in his postconviction appeal."(PDF 41 at 1-3)

However, regardless of the reasons for not responding or replying, As the Montana Supreme Court held:"The state has an obligation to either brief an issue or concede it." State v Greeson 2007 MT 23, 36 Mont 152 P.3d 1091.

On February 13, 2019, the Montana Supreme Court documented: The State of Montana did not repond to the first request either(November 16, 2018). This court did not address this motion at the time, Upon consideration and no objection raised, therefore it is ORDERED...The Clerk of the Supreme court is directed to attach his November 16, 2018 Appendix and his February 1, 2019 Appendix to his opening brief.(Doc 5 at 21, line 13)

The supreme Court failed to rule on the issues in nthe filed appendices that were not objected to nor were they responded to, the Supreme Court was obligated to review and rule on the fact that the State called the charging statements inadmissable and the requirement that those statements be excised from the charging documents and replaced with admissible statements that proved the same facts, other than the "victims" statements, then continued to file amended informations using the same inadmissible statement and having no probable cause(Doc 5 at 37, line 1).

The Supreme Court also failed to address statements that were in claim 4 of Pierce III, that were the Statements denied under oath and deposed in Federal Court and were admitted as truthful and under oath is State Court.

Also overlooked was the fact that the prosecutor "knew what was said." after directly referring these in the appeal of DA 18-0404 and the petition for re-hearing, pursuant to R.APP.P. Rule 20(2)(c).(Doc 5 at 21, line 6)

Although the issues of the prosecutors known use of perjured testimony was addressed in the petition for re-hearing and the order, ordering the Second Supplimental appendix to be attached to the appeal opening brief, The Supreme Court never addressed these issues(Doc 5 @ 24-27).

The following documents are based, in part, on newly discovered evidence that developed after trial. In Pierce v Barkell, 2016 US Dist Lexis 85408, decided June 30, 2016, and filed in CV-15-071-BU-BMM-JCL, the court articulated:

"review of Pierce's filings reflect that all of the claims he advances in his complaint raise questions about 1) The veracity of the witness statements on which the criminal investigation and prosecution proceeded, 2) the integrity, trustworthyness, and accuracy of the criminal investigation conducted, and reported, influencing witnesses or witness tampering and the fabrication or falsification of statements and evidence. The import of all Pierce's allegations and arguments regarding the flawed investigation and improper criminal prosecution is to suggest that he was wrongfully convicted of the sexual offenses. If Pierce succeeds on any of his claims, that success would necessarily imply that one or both of his convictions are invalid(Doc 55 at 13, line 27).

In Pierce v Guyer, 2019 Mont Lexis 518, 398 Mont 444, 454 P.3d 626, 2019 WL 4954992: The Court observed: Pierce..contends that "false Information" was used in the prosecuting documents and was the basis for not admitting forensic interviews. He includes excerpts of transcripts from the trial and his federal civil case, in his twenty-eight page petition. He cites to case law and statutes, raising issues of new evidence, perjury, due process and other Constitutional Rights violations. Pierce further agrues that the Court lacked subject matter jurisdiction and that there was a lack of probable cause to indict, resulting in violations of his right to be free from double jeopardy.(Doc 5 at 36, line 1)

Because the Clerk of the Supreme Court was directed to add the second Appendix to the opening brief of the appeal, and because the State of Montana conceded the issues addressed, and because the Supreme Court failed to address the issues in thier rulings, there is, therefore, no valid objection to the entirety of the issues.(Doc 5 at 28, line 23)

When the facts used for charging are deemed to be inadmissible at trial, and the State continued to file amended information, based on the same inadmissible

probable cause, there is no probable cause.

When the statements used for charging do not match the trial testimony, or the complaining witness denies trial testimony of the statement used for the charging documents, under oath and deposed in federal court, the state fails to prove every element of the charging document and the case would have to be dismissed.

Especially when those issues are presented to the supreme court and are unresponded to and unobjected to by the State of Montana, and in 2:19-058-BMM-KLD, the federal magistrate granted judicial notice in(Doc 19, page 3), that the case needs to be dismissed.

In CV-15-0071-BU-BMM-JCL, M.R. and her mother issued document 24 on February 16, 2016, A disclosure statement of M.R. and Malissa Raasakka, that claimed on page 7; "M.R maintains she should not have to testify in this matter as she should have immunity with respect to her testimony in state court, But, she has knowledge as to Pierce's alleged claims regarding the statement that she made to her mother, Pierce, the police and her trial testimony(Doc 24, page 7).

MS. Raasakka maintains she should not have to testify in this matter, as she should have immunity with repect to her testimony in state court. But, she has knowledge as to Pierce's alleged claims regarding the statements that she made to her family, Pierce, the police and her trial testimony.

Montana Code Annotated 46-15-331(4) states in part: Immunity does not extend to prosecution or punishment for false statements given in any testimony required under this section.

On February 14, 2012, ADLC Chief of Police, Tim Barkell, documented: "I told Joan that if someone was going to come and investigate this case, then have then come and do it, but if she couldn't find anyone to do this investigation, then we will do it, because this was not just going to go away."

The Attorney General's Office then took the case and investigated, because they felt the forensic interview was credible, and made sure this case would not just go away.(Doc 5 at 44, line 14)

Under the Due Process Clause of the Fifth Amendment, throught the Fourteenth Amendment, the prosecutor is required to prove beyone a reasonable doubt every element of the crime with which a defendant is charged. See In Re Winship 397 US 358, 364(1970)(Holding that the Govenment must prove every fact necessary to constitute the crime "beyond a reasonable doubt') See also US v O'Brien, 560 US 218, 224(2010)(Distinguishing between element of a crime [that] must be charged in an indictment and proved to a jury beyond a reasonable doubt." and "sentencing factors a[that] can be proved to a judge at sentencing, by a preponderance of the evidence") The Winship "beyond a reasonable doubt standard applies in both State and Federal proceedings. See Sullivan v Louisiana, 598 US 275, 278(1993). The standard protects three interests. First, it protects the Defendant's Liberty interest, See Winship 397 US at 363. Second, it protects the Defendant from the stigma of conviction. id. Third, it encourages community confidence in criminal law by giving "concrete stubstance" to the presumption of innocence, id, In his concurring opinion, Justice Harlen noted that the standard is founded on "a fundamental value determination of our society that it is far worst to convict an innocent man then to let a guilty man go free." id at 372(Harlen, J. Concurring)

The burdon of proof consists of two parts: the burdon of production and the burdon of persuasion. The party bearing the burden of production must produce enough evidence to allow a factfinder to determine that the fact in question occurred, The party who first pleads the existance of a fact not yet in issue has the burden of production, but this burden can shift from one party to another, if a party fails to sustain its burdon of production, that party is subject to a adverse ruling by the court. For instance, the prosecution has the burden of production on every element of the offense charged, if the Government fails to prove sufficiant evidence for any element, thereby not bringing the fact into issue. The Judge may direct a verdict in the defendants favor. See generally, Lafave, Criminal Law 1.8(5th ed 2020); McCormick, Evidence 3363(6th ed 2006).

The party bearing the burden of persuasion must convience the factfinder that a fact in issue should be decided a certain way. See Winship 397 US at 364.

The due process clause places the burden on the prosecution of persuasion for every element of crime, charged, and only in rare circumstances does

the burdon shift to the defendant. Any shifting of the burden of persuasion must withstand Constitutional Scrutinary. See Patterson v N.Y. 432 US 197, 210(1970) (Due process not violated by requirement that defendant prove affirmative defense by preponderance of evidence): See also Smith v US 133 S.Ct 714, 719 2013)(Due process not violated by requiring defendant to prove beyond a reasonable doubt that his withdrawal from conspiracy occurred outside statute of limitations.)

The governments failure to meet it's burden of proof results in the defendants acquittal at trial or reversal of the conviction on appeal. See Winship 397 US at 363; See e.g. US v Burgos 703 F.3d 1, 16-17(1st Cir 2012); US v Clark 740 f.3d 808, 812(2nd cir 2014); US v Cuevas-Reyes, 572 F.3d 119, 122-23(3rd Cir 2009); US v Benner 648, F.3d 209, 214(4th Cir 2011); US v Davis 735 F.3d 194, 202(5th Cir 2013); US v Parkes 668 F.3d 295, 300-03(6th Cir 2012); US v Jones 713 F.3d 336, 346-52(7th Cir 2013); US v Alexander 679 F.3d 721, 727(8th Cir 2012); US v Lequire 672 F.3d 724, 728-32(9th Cir 2012); US v Smith 641 f.3d 1205-06(10th cir 2011); US v Jiminez, 705 F.3d 1305, 1308-11(11th Cir 2013); US v Gaskin 690 F.3d 569, 576-82(D.C. Cir 2012)

Presumption - a preseumption is an evidentary device that enables the the factfinder to find a statutory element of a crime, - called an "ultimate" or "elemental" fact - from "basic" or "evidentary" facts already proved beyond a reasonable doubt. See Cty Ct of Vister Cty v Allen 442 US 140, 15661979).

Most presumptions are given in the jury instructions, for example, in Allen, the Judge instructed the jury, in accordance with a statute, that the Defendant's presence in a car containing two handguns was presumptive evidence of gun possession. See id at 144-65.

The Supreme Court has cautioned that a presumption is unconstitutional if it undermines the factfinder's responsibility...to find the [elements of a crime] beyond a reasonable doubt. id at 156; see also Francis v Franklin 471 US 307, 316(1985)(Due process prohibits use of presumption that relieves State of burden of persuation on essential elements of intent); See Medley v Runnels 506 F.3d 857, 867-68(9th Cir 2007)(Due Process prohibits jury instruction creating mandatory presumption that relieves state of burden of proving a flare gun is "designed to be used as a weapon);

The factfinder's freedom to assess the evidence varies according to whether the presumption is permissive or mandatory.

A mandatory presumption requires the jury to infer the elemental fact if the prosecution proves certain basic facts beyond a reasonable doubt. See Allen 442 US at 157. There are two types of mandatory presumptions;

conclusive and rebuttable, a conclusive presumption requires a jury to infer the elemental fact upon proof of a basic fact and thereafter removes the presumed fact from the case, technically a conclusive presumption is not a presumption, but rather an irrebuttable direction by the Court to find elements. A jury may not reject the presumption, nor may the defendant argue which are contradicted by those documents or allegations that are merely conclusory, unwarrented deductions of facts, or unreasonable inferences" Daniels-hall v Nat'l Edu Ass'n 629 F.3d 992, 998(9th Cir 2010).

The US District Court judge made false presumptions in (Doc 52 at 42)when it was stated: "Pierce has not demonstrated that the State knew of and fabrication or had unclean hands in presenting the same. Pierce has presented no evidence, aside from his own assertions to show that the State relied on false testimony. No corresponding requirement forced the State to correct testimony provided by M.R. or her Mother."

The US Supreme Court has a long history of constitutional violations against the use of false evidence and false testimony. These can be validated in (Doc 5 at 75 through 78).

On October 20, 2015, the petitioner filed a civil litigation in the third Judicial District Court for the State of Montana, in and for the county of Deer Lodge. where proof of the false statements were the result, the judge disregarded.

The magistrate in 2:19-058-BMM-KLD issued judicial notice on Documents 15 and 18, through document 19. This judicial notice was for documents and exhibits attached. This judicial notice covers double jeopardy(Doc 5 at 111 to 113); false information in a PSI used for sentencing(Doc 5 at 113), Illegal restitution for nicotine treament for a minor(Doc 5 at 115); no probable cause based on Montana and Federal law(Doc 5 at 21 through 33) and that Mr. Pierce is not and did not receive equal protection as when other courts dismissed charges when forensic evidence does not match trial testimony. Documents also covered ineffective counsel for sentence review. The judicial notice of document 15, page 4 covered specifically the paragraphs 3, 4, 5, 6, 7, 9 and 11 have to excised out of the charging documents and replaced with admissible material evidence that proves the same facts. State v Holt 2006 Mt 151, 332 Mont. and the page 8 statement that:

the case of Dc 12-29, State v Pierce must be vacated and the charges dismissed."

The federal judge disregarded documents attached to the brief, document-by-reference and judicial notice by the magistrate Kathleen DeSoto.

To state a basis for habeas Corpus relief. id at 649, conclusory allegations unsupported by specific facts are subject to summary dismissal. Blackledge v Allison 431 US 63, 74, 97 S.Ct 1621, 52 L.Ed.2d 1036(1977). A claim for relief is facially plausible when the pleading alleges facts that allow the court to draw a reasonable inference that the petitioner is entitled to relief. Ashcroft v Iqbal, 556 US 662, 678, 129 S.Ct 1937, 123 L.Ed.2d 868(2000). A District Court need not "review the entire state court record of habeas corpus petitioners to ascertain whether facts exist which support relief. Adams v Armontrout 897 F.2d 332, 333(8th cir 1990). Rather to comply with Rule 2(c)'A petitioner must stated specific, particular particularized facts, which entitle him of her to habeas Corpus relief for each ground specified. id an 334.

The instant case is not an isolated incident in the 9th Circuit, The case of 2:24-CV-00023-dwm, doc 5, filed 5/28/2024, it was hereby ORDERED that the following cases were reassigned to the honorable Donald W Malloy for all further proceedings. Of the 81 total cases, Brian Morris is specifically excluded from 45 of the listed cases; and: the Clerk shall file a copy of this order in each of the above referrenced cases. Dated this 28th day of May, 2024. Signed by Brian Morris, United States District Court.

This case warrents remand for a true and accurate review of the merits in the Habeas Corpus pursuant to Rule (2)(c) of the Rules for 2254, Fed.R.Civ.P. Rule 10(c) and the holdings of judicial notice, with some non-conflicting judge besides Brian Morris.

In Franks v Deleware 438 US 154, 98 S.Ct 2074, 57 L.Ed.2d 667(1978) the Supreme Court has held:Where the defendant makes a substantial preliminary showing that false statement knowingly and intentionally or with reckless disregard for the truth was included by the affidavit in the warrent affidavit, and the allegedly false statements is necessary to the finding of probable cause, the fourth amendment requires, in the event that a hearing he held as the defendant request, in the event that at the hearing the alleagationsof perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidaivts false material set to one side, that the affidavits remaining content is insufficiant to estalish probable cause. The warrent must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit,

The Montana Supreme Court held that it is not required that information in the affidavit supporting a charge, which might later be found inadmissible

at trial, be excised before a determination of probable cause is made. If at trial...the State could not prove it's case against Holt with admissible evidence, Holt coule move to dismiss at the close of the States case-in-chief and such motion would have to be granted-State v Holt 2006 MT 151, 332 Mont 426, 139 P.3d 819 P.29.

We cannot uphold warrents which are not based on probable cause and probable cause cannot be estabished by the use of incorrect information. From all the facts appearing in the record, it is apparent the warrent was not based on probable cause since the testimony given to support the warrent was incorrect. See State v Nanoff 160 Mont 334.

If there is no probable cause due to incorrect information, then the court is without subject matter jurisdiction and jurisdiction cannot be waived, and the court is under a continueing duty to dismiss an action whenever it appears that the Court lacks juridiction. Augustine v United States 704 F.2d 1074, 1077 (9th Cir 1985).

The Issues

In Document 1; States Motion to file Information and Affidavit in suppport: Filed 8/17/2012, in Dc 12-29: Page 1; Daniel Guzynski, an Assistant Attorney General for the State of Montana, moves the Court for leave to file an information after being duly sworn upon oath, alleges, based on information and belief that the defendant has committed the offense of ....The following facts provide probable cause to believe that the Defendant, Robert Pierce has committed the alleged offenses:(Doc 5 at 25, line17).

In Document 79: States Response to Defendants Motions in Limine 1 - 11, page 8. filed 2/15/2013: "Never the less. for other reasons, the State finds that both the transcripts and recordings of the victims interviews to be inadmissible at trial.(doc 5 at 83, line 6)

In Document 120; Memorandum and Order Granting States Motion for leave leave to file Amended Information, filed 3/15/2012, page 2: "To establish probable cause for the filing of the amended Information, the State relies on the previously filed affidavit in support of the State's Motion for Leave to file an information."(Doc 5 at 26, line 23)

In document 152; Order granting Motion for Leave to file a Second Amended Information, filed 4/15/2013: "Based on the State's Motion and affidavit for Leave to file a second Amended Information, the Court find probable cause to believe the defendant has committed the alleged offenses."(Doc 5 at 26, line 32).

Following the Supreme Court holdings(Montana) in Holt and Nanoff, the

new charging document, less excised statements for inadmissible statement would look like this:

Document 1, Paragraph 3: On February 16, 2012, a forensic interview was conducted with M.R. at the Butte Child Advocacy Center. On June 8, 2012, a second interview was conducted with M.R at First Step in Missoula. First Step is a child advocacy Center and is affiliated with St Patricks Hospital. (page 4): Based on these facts, the affiant believes probable cause exists that the defendant has committed the alleged offenses."(Doc 5 at 25. line 28)

3: Excised Out, because prosecution found inadmissible at trial..
4: Excised Out, because prosecution found inadmissible at trial.
5: Excised Out, because prosecution found inadmissible at trial.
6: Excised Out, because prosecution found inadmissible at trial.
7: Excised Out, because prosecution found inadmissible at trial.
8: Excised Out, because prosecution found inadmissible at trial.
9: Excised Out. because prosecution found inadmissible at trial.
10: Malissa confronted Pierce about what M.R. had told her, Pierce denied that he had ever touched M.R.
11: Excised Out, because prosecution found inadmissible at trial.

"Based on these facts, the affiant believes probable cause exists that the Defendant has committed the alleged offense. Accordingly, the affiant moves the Court to (to amend) leave to file the requested information.(Doc 21, filed 3/22/2021, page 10 of 26, line 25)

Article II, Section 4 of the Montana Constitution and the 14 th Amendment to the United States Constitution state in part: No person shall be denied the equal protection of the law.

Article II, Section 11 of the Montana Constitution and the 4th Amendment of the United States Constitution state in part: No warrent to search any place or sieze any person or thing shall issue without describing the place to be searched or the person or thing to be siezed, without probable cause.

Article, section 16 states in part: Courts of justice shall be open to every person and speedy remedy afforded for every injury of person, property or charactor.

Article II, Section 17 of the Montana Constitution and the 14th Amendment of the United States Constitution state in part: No person shall be deprived of life, liberty or property without due process of law.

Article II, Section 22 of the Montana Constitution and the 8th Amendment of the United States Constitution state in part: Excessive bail shall not be required or excessive fine imposed or cruel and unusual punishment.

In 2:15-CV-00071-BU-BMM-JCL the alleged victim and her mother responded by claiming: "Being first duly sworn upon oath, deposes as say as following I am the Defendant in the foregoing complaint. I have read the forgoing complaint and facts of the matter contained herein are true, correct and complete to the best of my knowledge and belief."(Doc 5 at 79, line 3)

Federal rules of Civil Procedure Rule 17(3)(c)(1) states: The following representatives may sue or defend on behalf of a minor or incompetent person: (a) a general guardian

The alleged victims mother was her guardian when the suit was filed and the
the mother filled in the answers for both herself and the minor alleged victim. (Doc 5 at 79, line 9).

The alleged victim and her mother denied statements made in both forensic interviews and also denied statements under oath and deposed, testimony given under oath in trial. The answers to the civil complaint were filed in cause 2:15-CV-00071-BU-BMM-JCL on December 11, 2015 and were filed as documents 14 and 15, which provided a wealth of information into why the forensic interview statements do not match trial statements did not match trial testimony.(Doc 5 at 79, line 12)

Examples of known obstruction of justice and perjury are followed as developed through the civil action:

On April 23, 2013, Malissa Raasakka gave the following perjured testimony on 4/23/2013 at page 208:
Q: How long have you known Mr. Sather?
A: Ever since I was little.
Q: At one time, did you even date each other?
A: Yes, we did.
Q: After that, were you able to remain friends?
A: Most definately.(Doc 5 at 79, laine 26)

Ms Raasakka maintains she has knowledge as to...statements made to police and her trial testimony(Doc 21-6, page 45)(addmited under oath on 4/23/2013 and denied under oath on 12/11/2015)

Malissa Raasakka responded to the complaint, pargraph 8: at all time relevent hereto and in all times mentioned, Respondents Bill Sather and Malissa Raasakka were friends and had dated each other. Ms Raasakka responded in document 15 "I do not know if these statements are true or not. I deny them". (sworn to under oath on 4/23/13 and denied under oath on 12/11/15)(MS Raasakka maintains she has knowledge as to...statements made to police and her trial testimony)(doc 21-6, page 45)(Doc 5 at 80, line 1)

"these paragraphs in the complaint are true, I admit them:

66: "and then my mom got really made, she kept telling me things to say to him."

67 "And then my mom had said, um, she didn't, she told me to say you know you know you touched me." (doc 5 at 80, line 5 and 8)

81: "On February 21, 2012 at approximately 4pm, Matteson met with Malissa Raasakka Raasakka recalled that at a Rockin the Rivers festival, Pierce had taken photos of underage girls exposing themselves. He later made a CD of his photos and sent it to another mutual friend, Dave Crnich." (Doc 5 at 80, line 10)

The following is a combination of statements, denied under oath and deposed that were made in forensic interviews, including the forensic interview used for charging Mr. Pierce. These statements were affirmed truthful in the interviews and under oath at trial: "I do not know whether these statements are true or not, I deny them: See 68, 69, 70; 71, 72, 73, 74, 75, 76, 82, 83, 84:

68 (NJ) Okay, you said he took your pants off? (MR) No, he just unbottoned them!"

69: (MR)"we filled out our statements. It took us about a week, we turned em in."

70: My brother said I want off it. That's my grandpa. I want off and I talked to him and said, how are you not believing me. He said, he goes, you told me two different stories...he goes, you told me he molested you and now your saying he fingered me..or touched me, he goes, you told me he touched...whats the difference between touched and fingered? and he's like touched is where he just touched you, he didn't go inside you. And I said...well, sorry, I'm only 13; I don't quite know the difference between em I said.(Doc 5 at 80, line 33)

71 "Respondent MR's testimony was much different. She testified "and then the next couple of days, I got a phone call from Anthony, first he texted me and I answered, he told me that I'm a liar, because I said touched and told my mom molested(see TR 4/23/13 at 91.15(Testified as truthful in state Court and denied under oath and deposed in Federal Court on 12/11/2015)(Doc 5 at 81, line 9)

72: "Have you had much communication with Anthony?(MR) No, I talked to him after that when he texted me and said he was going to slit my throat if I proceeded, and I need a lie detector test."(See TR 4/23/2013 at 92.03)(Testified to under oath in state court and denied in federal court on 12/15/2015)(Doc 5 at 81, line 13)

73: "I barely talk to my grandma anymore, she talked to my brother. my brother said he wanted off the restraining order, that I had to get a lie detector test because he doesn't believe me and um, that he wanted off the restraining order and then I don't know what to do, oh, what to do."(affirmed truthful on 2/16/12 and denied under oath and deposed on 12/11/2015)

74: "Do you know if he had occassion, and if you don't know the answer, then I don't want you to speculate, but do you know whether or not he talked to Robert after he talked to you? (MR) he did talk to Robert."(See TR 4/23/13 at 91.24)(contradicts paragraph 73)(Testified to under oath in state court and denied under oath and deposed on 12/11/2015 in federal court.)

75 "I've got everybody I need by my side, like my boyfriend,my best friend, my mom, who really cares about me and the whole police station.I'm sure they will be on my back to."(Affirmed truthful on 2/16/2012 and denied under oath and deposed on 12/11/2015)(Doc 5 at 81, line 27)

76: "So the next week goes on. It was Saturday. The next week goes on and we go back out there and it was my little brother and sister."(Little sister was not born until 2 years after alleged attack)(Affirmed truthful on 2/16/12 on page 0374 and denied under oath and deposed on 12/11/15). (Doc 5 at 81, line 31)

82: "like I have this friend that use to babysit me, her names Trina and he had pictures of her on there."(Affirmed truthful on 6/8/12 at page 0425 and denied under oath and deposed on 12/11/15.)(Doc 5 at 81, line 35)

83: "yeah and um, and he would like, I've personally never seen it, but he has sent video of her around to like other people through E-mail or something.(NH) How do you know? (MR) my mom, her friend Dave." (Affirmed truthful on 6/8/12 at page 0426 and denied under oath and deposed on 12/11/2015.)(doc 5 at 82, line 1)

84: "So from what you know, your mom told you the grandpa sent video with Trina. (MR) She told the investigators that, or she wrote it in her statements, or her and the investigators, I don't know. I didn't see any of her statement, we didn't put our statements together. We did them both by ourselves."(affirmed truthful on 6/8/2012 at page 0427 and denied under oath and deposed on 12/11/2015)(The denial of not doing together, the police reports supports the "similarities in police reports" in the complaint pages 5 through 8 of 17, and directly conflicts with information provided investigators on 0014, paragraph 81 where her mother admitted as true under oath.)(doc 5 at 82, line 4)

When these statement denied under oath are seperated, we get the following:

"I deny I didn't see any of her statements".

"I deny we didn't put our statements together."

"I deny we did them both by ourselves." These statement prove witness tampering and obstruction of justice and perjury. See also: "MR maintains that she should not have to testify in this matter testimony as she should have immunity with repect to her testimony in state court. But, she has knowledge as to Pierce's alleged claim regarding thesstatements that she made to her mother, Pierce, the police and her trial testimony.(Doc 21-6, filed 3/22/21 page 45 of 47)

Ms Raasakka maintains she should not have to testify in this matter as she should have immunity with respect to her testimony in State Court. But, she has knowledge as to Pierce's alleged claims regarding the statements that she made to her family, Pierce, the police and her trial testimony(Doc 21-6, filed 3/22/21, page 45 of 47.)

If MR and her mother maintain that they know what they said to the police and in trial then they know they falsified statements to investigators and committed perjury.

To prove that prosecutors knew of this perjury and obstruction of justice, we simply need to look at: "On 3/11/2013, the State articulated:" Your Honor, as far as the States work product, when I have an important interview like that it is my practice to go throught there and, for my own work product, to number the statements made and to catalog those statements, so I know what is said."(doc 5 at 83, line 10)

The co-prosecutor in DC 12-29, Mary E. Cochenour, physically sat in on the June 8, 2012 interview that was used for charging purposes, so she also knew what was said(25-95 at 6 of 10)(#10 appendix 35 at 25).

However the Federal district court, who did not use appendices filed with the habeas on 1/8/2020 and did not electronically attach them to the record until 1/5/2024, made uninformed decisions on Claim 6::States use of perjured testimony.

The Federal Court wrote in document 52, page 39: In his federal filing, Pierce claimed that differencies in statements made by MR and her mother, pre-trial, during trial and post-trial are "profound"(Doc 5 at 85) for example, Pierce states that during trial MR's mother testified that she had known officer Sather since she was little, they dated at one time, and have remained friends over the years(Doc 5 at 91). Pierce then states that in the civil case, MR's mother denied those same statements. Pierce also claims the MR stated that her mother instructed her to say Pierce had "touched her." Pierce asserts MR stated that on one occassion he took her pants off, but later testified that he just unbuttoned her jeans. Pierce also suggests MR told two different versions of the events. Pierce either "touched" her or "fingered" her. The implication being that a difference exists between the two terms, and that one of them does not meet the legal definition of sexual Intercourse without consent. Pierce also claims that her older brother after she disclosed Pierce's abuse, MR stated her brother Anthony wanted to "slit her throat" or, alternatively, have her take a lie det

detector test. Pierce also posits that MR and her mother must have prepared their initial reports to law enforcement together, due to similarities contained within both.

In support of this contension, Pierce claims the only reason MR would have known about a picture of a photo of her former babysitter/friend "Trina" in her bra and panties that Pierce took, would have been if MR saw her mother's statements to law enforcement. Pierce cites to these examples to assert that the case against him was built on a foundation of perjury, that the prosecution deliberately kept from the jury(id). In Pierce's PCR proceeding, the Montana State District Court determined that any claim Pierce made that the State impermissibly used the victims pre-trial statements at trial and/or prevented him from using such statements were record based. Pierce waived these claims when he failed to raise the claims on appeal. Further, to the extent that Pierce claimed the State allowed false evidence from MR concerning the photograph of the woman she knew, such claims were refuted by the record.(id)at 8).

Pierce argued on appeal that MR's statement established the falsity of her her trial testimony. Pierce contends that the State violated his right to due process by allowing the preported false testimony. The Montana Supreme Court rejected the claim and held that Pierce's use of MR's statements out of context did not demonstrate that MR's accusation were false of that the prosectutors knowingly presented false testimony. Pierce III, 2019 Mt 124, 14 at 7, 13 .

"[A] conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the fourteenth Amendment. Napue v People of State of Ill. 360 US 264, 209(1959).

Pierce has failed to establish that the state knowingly presented false or misleading evidence during the testimony of MR or her Mother. Pierce provides his own interpetations of cherry-picked statements made by both witnesses at various stages of his proceedings. Pierce suggests that shifts in their accounts of events demonstrates an unreliability or that MR's mother unduly pressured MR

into accusing Pierce. Pierce's own conclusory statements regarding purported changes in statements or subsequent trial testimony do not demonstrate their falsity with any degree of certainty. Pierce has not demonstrated the state knew of any fabrication or had unclean hands in presenting the same. Pierce has presented no evidence, aside from his own assertions, to show that the State relied upon false testimony. No corresponding requirement forced the State to correct testimony provided by MR or her mother. Napue 360 US at 269.

Both the Montana State District Court and the MontanaaSupreme Court rejected Pierce's claim that the State knew or should have known that this testimony was false. It is not the role of this court to reassess credibility judgement or weigh potentially conflicting testimony unless the underlying decision was based on an unreasonable determination of the facts. 28 USC 2254(d). Pierce has not demonstrated that the Montana State Court decision was unreasonable. This claim a also fails under the deferential standard of review.

The judges finding were based on an unreasonable application of Fed.R.Civ.P. Rule 10(c), by disregarding all attached exhibits and only amending the document 5 Amended Petition with(additional attachments) added on 1/5/2024, only 2 days after he ordered designation of records to the 9th cir. This was proof of deliberate deception by the court to adequate remedies and willful concealment by the court.

STATEMENT TOPIC: Missoula wingate testimony versus interview: See paragraph 4 of charging document(Doc 5 at 84, line 36)(See also 25 - 2 at 2 of 4)

"When I have an important interview like this it's my practice to number the statements made...So I know what is said.(Doc 5 at 85, line 1).

In this example, prosecutors used the following numbers, to know what is said: 54, 55, 56, 57, 60, 61, 62, 63, 64, 65, 65(a), 65(b), 65(c), 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80 and 97.(Doc 5 at 85, line 3)

MR maintains she has knowledge as to statements made to police(Doc 21-6 at 45 of 47).

Interview page 0404: "and then I woke grandma up and asked my grandma if I could sleep with my brother and sister(prosecutor used # 60 here)(Note: little sister was not born until 2 years after the alleged attack. Prosecutors knew this statement was false.) Um, we were, it was, I think it was New Years cause were

at the Wingate.(prosecutor used #58 here also)

Interview page 0405: "Like he would like grab my hand and stuff and like try to put my hand down his pants.(prosecutors used #60 here)
like he'd like grab my hand like, try to force my hand down his pants." (prosecutors used #64 here)

Interview page 0406:
Q: Did you ever do that?
A: Once(prosecutors used #65 here)
Q: Okay, tell me all about when he forced you to touch him on his penis, what did it feel like?
A: I don't know, I was scared(Prosecutors used #65(b) here)
A: it was like, he would like move my hand like this.
Q: Okay, Okay, what did his penis feel like?
A: Hard(prosecutors used #65 here)
Q: Okay, and what direction was it pointing.
A: I don't know.

Interview page 0407:
Q: You don't know. Um, Okay so it felt hard, anything else you can think of about what it felt like?
A: Hmm Mmm.
Q: You said this was in the hotel(prosecutors used #67 here)
A: I was in the bed with my grandma and grandpa(prosecutors used #71 here)

Interview page 0408:
Q: Okay, then you got up and went and slept with your brother. Who's your brother? (prosecutors used #79 here)
A: Anthony
Q: Was this incident before the 5th grade?

Interview page 0409:

A: Yeah.
Q: Yeah, okay, and um besides forcing him, forcing you to touch him did anything else happen in the bed in the hotel(prosecutors used #80 here)

Interview page 0412:

Q: Okay, um, you talked about him forcing him, forcing you to touch him and you told me that that happened at the hotel, at the Wingate, did he ever, was there another time when he forced you to to touch him?
A: HmmMmm(negative)(prosecutors used # 97 here)

In DC 12-29 document 1, Information for leave to file #4: M.R stated that after the initial time that he touched her while playing video games Pierce continued to touch her sexually. M.R. traveled to Missoula with Pierce, her grandma, and her brother and stayed at the Wingate hotel. During the night M.R. was in bed positioned in the middle between Pierce and grandma. While in bed, Pierce grabbed M.R.'s hand and made M.R. touch his penis. Pierce was wearing boxer shorts and there was hole in his boxers that enabled M.R. to touch him. Pierce's penis was hard M.R. was scared. M.R woke grandma up and asked if she go sleep with her brother. M.R. then went and cuddled up with her brother." (doc 21-6 at 26 of 47)

"Never the less, for other reasons, the State finds that both the transcripts and recordings of the victims interviews to be inadmissible at trial.(Doc 5 at 83, line 6).

Now we examine what was testified to at trial.(doc 5 at 86, line 3). (See 4/23/13 At 58)

Q: Okay, I'd like you to slowlyy tell the jury what happened at the Wingate.
a: We were at the Wingate and we went swimming and we got there, we would first put on our swimsuits and get ready to go to the waterslide, and I put my swimsuit on and he said by boobs looked good in my swimsuit and then we go swimming and we went to dinner after we went swimming.
We got back to the hotel, and I cuddled in the bed with my grandma and Robert, and she was turned over and she was on her side, and I was facing Robert, my back to me grandma, and he began to suck on my boobs.(doc 5 at 86, line 5)

Trial testimony of 4/23/2013 at page 60:
A: He sucked on my boob and pulled down my nightgown.
Q: You indicated he sucked on your chest, right?
A: Yes.
Q: You called it "boobs" right?
A: Yes.
Q: Did you know whether or not you were developing at all at this point?
A: I wasn't, I was very slow starting.
Q: I'm Sorry?
A: I was starting to.(remember 0408 and 0409: Was this incident before the 5th grade? Yeah.)

M.R. maintains she has knowledge as to her trial testimony(21-6 at 45 of 47).

Prosecutor numbered the interview statements to know what was said, used the the interview statements for probable cause then allowed M.R to testify differently. Failed to prove number 4 of charging document.

We get the same thing when discussing kalispell at charging document #5 statement

"When I have an important interview like this it's my practice to number the statements made...so I know what is said.(doc 5 at 85, line 1)

M.R. maintains she has knowledge as to statements she made police(doc 21-6 at 45 of 47)

Statement topic: Kalispell interview versus trial testimony: See #5 of charging document. failed to prove this element.

In this example, numbers used by the prosecution in their work product were: 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 89(a), 90, 92, 93, 94, 95 and 98 (doc 5 at 87, line 19)

Interview page 0409:

A: We were in Kalispell(prosecutors used # 82 here)
A: And then he like, then like I laid down cause it was like nighttime after we went and ate dinner, it was nighttime and I laid down to go to sleep with my grandma, and he like was like starting to suck on my boobs and stuff so then I just like this is, no this is wierd.(prosecutors used #85 here)

Interview page 0411:

Q: Okay, and the time in Kalispell, both Anthony and Nathen were there. How about the time at the Wingate? Anthony was there, was Nathen there?
A; Mmm Hmm(prosecutors used #94 here)(at page 0404 she claimed it was her brother and little sister)

Interview page 0410:

Q: Okay, um, when he was, the time where he was sucking on your boobs at the hotel in Kalispell, did he actually touch you on your crotch?
A: Yeah(prosecutors used #89(a) here)
Q: Okay and was it on the inside or the outside of your crotch?
A; On the outside(prosecutors used #90 here).(doc 5 at 87, line 35)

See Information to file leave #5(21-6 at 26 of 47, filed 3/22/21)

On another occasion, MR traveled with Pierce, her grandma and brothers to Kalispell and stayed at a hotel. While at the hotel M.R got her swimsuit on to go swimming. Pierce stated to M.R. "you look hot" M.R went swimming and then ate dinner. Later that night M.R was again in bed positioned between grandma and Pierce. during this time Pierce pulled down M.R.'s nightgown and "suck" M.R.'s "boobs" Pierce also touched M.R.'s "crotch" area on the outside. M.R. woke grandma up and went and slept on the other side of grandma, away from Pierce.

Now examine trial testimony.(Doc 5 at 88, line 5)

A: We were in kalispell going to the Columbia Falls waterpark, during the summer towards the end of summer, and we got there, and once again we put on our swimsuits on right away to go to pool to play.
Q: Did Robert says anything to you?
A: No, we went down to the pool, we went and ate dinner, and then that night, I was, once again, lying with Robert and my grandma Sue, and while I was laying there, he put his penis on me and touched my boobs.
Q: Did he ever try to make you touch him?
A: He tried.
Q: When was that, what trip was that?
A: Kalispell.
Q: How that happen?
A: he grabbed my hand and put it down there.

M.R maintains she has knowledge as to her statement at trial(Doc 21-6 at 45 of 47)

M.R has knowledge to making false statements to investigators and obstruction of justice and of giving perjured testimony at trial and prosecutors used Reckless disregard for the truth in charging and knowingly used perjured testimony at trial.

One of the bedrock principles of our democracy. "implicit in an concept of orderly liberty" is that the State may not use false evidence to obtain a criminal conviction. Napue v Illinious 360 US 264, 269 3, LEd.2d 1217, 79 SACt (1950)

One of the Bedrock principles of out democracy, "implicit in any concept of orderly liberty" is that the State may not use false evidence to obtain a criminal conviction. Napue v Illinious 360 US 264, 269, 3 L.Ed.2d 1217, 89 294 US 103, 112, 79 S.Ct(1959).

Deliberate deception of the judge and jury is inconsistant with the rudimentary demands of Justice. Mooney v Holohan 294 US 103, 112, 79 L.ED.2D 794, 55 S.Ct 340(1935)

Thus, a conviction obtained through use of false evidence, known to be such by representative of the state, must fall under the fourteenth Amendment: Napue 360 US at 269(citation ommitted), A conviction obtained using knowingly perjured testimony violates due process, even if the witnesses prejured testimony goes only to his credibility as a witness and not to the defendant guilt. United States v Houston 648 F.3d 806, 814(9th cir 2011)

The governments failure to correct testimony that it later learns is perjured is also a Mooney-Napue violation.

In assessing materiality under Napue, we determine whether there is any reasonable likihood that the false testimony could have affected the judgement of the jury. If so, the conviction must be set aside..."however, if it is established that the government knowingly permitted the introduction of false testimony, reversal is virtually automatic United States v Rodriquez 754 F.3d 1122, 2014 N5 App Lexis 1154.

In addition, the state violates a criminal defendant's right to due process of law when, although not soliciting false evidence, it allows false evidence to go uncorrected when it does appear. See Alcorta v Texas 355 US 28, 2 L.ed.2d 9, 78 S.Ct 103(1957); Pyles v Kansas 317 US 213, 87 L.ed 214.

The rule originated with Mooney in 1935, which held that a criminal defendant is denied due process when the State has contrived a conviction through the pretense of a trial which in truth is, but used as a means for depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony know to be perjured, 294 US at 112. Seven years later, in Pyles, the Supreme Court expanded this rule to encompass not only "perjured testimony, knowingly used by the State" but also "the deliberate supression by those same authorities of evidence favorable to [the criminal defendant] 317 US at 216.

Alcorta, decided in 1957, imvolved a case quite similar to the one at bat. In that case, the court was confronted with a Prosecutor who, on direct examination, knowingly allowed a witness to create false impressions 355

US 29-30. The prosecutor had instructed the witness not to volunteer what the prosecutor thought might be damaging information and then sat mute while the witness committed perjury. Id at 31. The Court held that the false impressions given to the jury by the prosector and the State violated Alcorta's right to due process.

Napue was decide two years later. The court stated: "a lie is a lie, no matter what it's subject, and, if it is in any way relevent to the case, the District Attorney has the responsibility and duty to [399 F.3d 984] correct what he knows to be false and elicit the truth." 360 US 264, 269-70, 3 L.Ed.2d 1217, 79 S.Ct 1173(1959)(quoting People v Sauvides, 1 N.Y.2D 554, 136 N.E.2d 885(NY Ct App 1956)

In United States v Bagley 473 US 667, 678 L.ed.2d 481, 105 S.Ct 3375(1985), the Supreme Court noted the "well-established rule that a conviction obtained by the use of perjured testimony is findamentally unfair, and must be set aside if there is any reasonable liklihood that the false testimony could have affected the judgement of the jury."(citation ommitted)

There is a very good chance that the perjured testimony affected the Jury!

The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury. It is the jury, not the court, which is the fact finding body. It weighs the contradictory evidence and inferences, Judges the credibility of the witnesses, receives expert instructions and draws the ultimate conclusions as to facts. The very essence of it's function is to select among conflicting inferences and conclusions that which it considers most reasonable,(Tennant v Peoria & P.V. Ry 321 US)(Washington & Georgetown R. Co v McDade 135 US 554, 571, 572). Courts are not free to reweigh the evidence and set aside the jury verdict because the jury could have drawn different inferences or conclusions or because the judge feels that other results are more reasonable. 321 US at 35, Williams v Clark 2923 US Dist Lexis 13065.

The Supreme Court held that: when confronted by seemingly inconsistant answers to the interrogatories of a special verdict, a court has a duty under the Seventh Amendment to harmonize those answers. If such is possible under a fair reading of them. Id at 119, A court is also obligated to try to reconcile the jury findings by exegesis, if necessary, id, Only in the case of fatal inconsistancies may the court remand for a new trial.

In Diasonic Inc v Acuson Corp 1993 US Dist Lexis 8871(9th cir 1993) held: The Seventh Amendment obligation on courts is not to recast findings of a jury...and is based on the Motion that juries are not bound by what seems inescapable logice to judges, InduCraft 47 F.3d at 497(Citation ommitted). if, however, the jury answers cannot be harmonized rationally, the judgement must be vacated and a new trial ordered. See also Richardson v Suzuki Motor Co. 868 F.2d 1226, 1238-39(fed Cir 1989); Floyd v Laws 929 F.2d 1390(9th Cir 1991).

In State v McClure 202 Mont 500: It is the perogative of the jury to decides the facts, and the court must uphold such findings when they are supported by substantial evidence. The jury is the fact finding body and it's decision is controlling(State v Fitzpatrick(1973) 165 Mont 220, 516 P.2d 605) given the required legal minimum of evidence, the Court will not substitute it's determination of the facts for that of the jury(State v Marseal (1974)163 Mont 412, 538 P.2d 1366) If substantial evidence is found to support the verdict, it will stand. State v McKenzie (1978) 177 Mont 280, 581 P.2d 1205; State v White(1965) 146 Mont 226, 405 P.2d 761; State v Rumley(1981) Mont 634 P.2d 446, 449, 38 St.Rep 1351.

It is hornbook law that this court cannot second-guess a trier of fact who has heard the testimony, scurtinized the witness and noted their demeanor and behavior on the witness stand. Jefferies v United States(9th cir. 1954) 215 F.2d 225, 226; United States v Johnson 1946, 327 US 106, 112, 66 S.Ct 464, 90 L.Ed 562)(See also: Davies v US 327 F.2d 301; Perez v US 297 F.2d 648-649(9th cir).

It is hornbook law that jurors are presumed to follow Court Instructions: Taylor v McEvan 2015 US Dist Lexis 176 585.

The following issue came to light in the Federal Distict Court, when Mr. Pierce filed document 37; A fundimental miscarriage of justice suppliment on 7/18/2022;

On April 15, 2013, the State of Montana filed the last Amended Information - in the case of DC 12-29. This Second Amended Information was filed under "form" and thereby no arraignment was needed.

The Montana Attorney General's Office with Daniel Guzynski, Assistant Attorney General, was handling the prosecution and made the following claims:

Daniel M. Guzynski, Assistant Attorney General and Special Deputy Deer Lodge County Attorney, alleges that the above-named Defendant, Robert Pierce has committed the following offenses in deer lodge county, Montana.

Count 1

SEXUAL INTERCOURSE WITHOUT CONSENT, a felony, as specified in Mont Code Ann § 45-5-503(1); on or about between April 4, 2006 and April 2, 2008, the Defendant Robert Pierce, DOB 2/27/1960, purposely of knowingly engaged in sexual intercourse with M.R.,(born April 1998) to sexual contact without M.R.'s consent. This offense is punishable by the provisions of Mont. Code Ann. § 44-5-503(3)(a), by a term of imprisonment of not less than 4 years, and not more than 100 years, or life, and a fine not exceed $50,000.

Count 2

SEXUAL ASSAULT,a felony, as specified in Mont. Code Ann. §45-5-502(1) and (3); On or about between April 4, 2006, and April 2, 2008 the Defendant, Robert Pierce. DOB 2/27/2960, knowingly subjected, M.R. (born April 1998) to sexual contact without M.R.'s consent. This offense is punishable by the provisions of Mont. Code Ann. §45-5-502(3), by a term of imprisonment of not less than 4 years, and not more than 100 years and a fine not to exceed $50,000.

On April 25, 2013, the jury was provided the following instructions:

INSTRUCTION 11: Defendant is charged in Count 1 of the Information with the crime of Sexual Intercourse without consent, in violation of Mont. Code Ann. 45-5-503, on or about a period of time on or between April 4, 2006 and April 2, 2008, The Defendant is charged in Count II of the information with the crime of Sexual Assault, in violation of Mont. Code Ann. 45-3-502, on or about a period of time on or between April 4, 2006 and April 2, 2008. In order to find the Defendant guilty, it is necessary for the prosecution to prove beyond a reasonable doubt that the commission of a specific act or acts constituting the crime within the period alleged. Also in order to find the Defendant guilty, you must unanimously agree upon the commission of the same spcific act or acts constituting the crime within the period alleged. It is not necessary that the particuler act of acts committed so agreed upon be stated in the verdict.

INSTRUCTION 19: To convict the Defendant of Sexual Intercouse without consent, as alleged in Count 1 of the information, the State must prove the following elements:

1. That on or about and between April 4, 2006 and April 2, 2008, the defendant subjected M.R. to Sexual Intercourse; and
2. The act of Sexual Intercourse was without consent of M.R., and
3. The Defendant acted knowingly.

If you find consideration of all the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of the elements has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

INSTRUCTION No: 21: As used in Count 1 of the information which charges the Defendant with the offense of Sexual Intercourse without consent, the term "without consent" means: The victim is incapable of consent because she was less than 16 years old.

INSTRUCTION No: 23: To convict the Defendant of Sexual Assault as alleged in Count II of the Information, the State must prove the following elements:
1. That on or about and between April 4, 2006 and April 2, 2008, the Defendant subjected M.R. to sexual contact;
2. The act of sexual contact was without consent of M.R.; and
3. The Defendant acted knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

INSTRUCTION No: 25: As used in Count II of the Information which charges the Defendant with the offense of Sexual Assault, the term "without consent" means: The victim was incapable of consent because she was less than 14 years old and the offender is 3 or more years older than the victim.

After hearing all the evidence between April 22, 2013 and April 25, 2013, the jury finished deliberating all the evidence and determined that the State failed to prove each of the elements of each count. beyond a reasonable doubt; "That, being duly impaneled and sworn to try the issues in the above-entitled cause, enter the following unanimous verdict."

Question No. 1: To the offense of Sexual Intercourse without consent against M.R, we find the Defendant Guilty.

Question No. 2: To the offense of Sexual Intercourse without consent at the time of the commission of the offense, was M.R. listed as Sixteen years of age and was the Defendant four or more years older than M.R.? Yes.

Queston No. 3: To the offense of Sexual Assault against M.R., we find the Defendant guilty.

Question No. 4: To the offense of Sexual Assault at the time of the commission of the offense was M.R. less than sixteen years of age and the Defendant three of more years older than M.R.? Yes.

So, the unanimous verdict of the jury was that the State did not prove beyond a reasonable doubt that any offense took place as charged, on about, between April 4, 2006 and April 2, 2008. Being as M.R.'s Sixteenth Birthday was April 3, 2014, the alleged offense had to take place 343 days after the

the jury verdict, because to be "as Sixteen years of age" and "less than Sixteen years of age" would place the commission of the offense at the moment of M.R's birth, on her Sixteenth birthday. This date is also 111 days after the Defendant was placed in prison for the commission of this futuristic crime.

For the jury to find "as Sixteen" The State failed to prove "without consent" on both counts, and for the jury to find find the commission of an offense to have taken place on April 3, 2014, the State fialed to prove that any crime took place, as charged in the Second Amended Information: "On or about, between April 4, 2006 and April 2008. Because Fed.R.Civ.P Rule 5.2(b)(6) excludes a pro Se filing in an action brought under 28 USC 2241, 2254 or 2255 from redaction requirements, Supreme Court Rule 34.6 is inapplicable.

JUDGEMENT OF THE COURT

On December 10, 2013, the Judgement of the court was handed down: It is the judgement of the court that the Defendant, Robert Pierce is guilty of the offense of Count I, Sexual Intercouse without consent. A felony in violation of Section 45-5-503 Sub (3) and Sub (5) of the Montana Code Annotated as charged in the States Second Amended Information(Not 45-5-503(1) and (3)(a) as actually charged in Document 153 for Count I?) and as evidenced by the jury's unanimous verdict in this case(as age 16 years, and not less that 16 years as instructed?)

It is the futher judgement of the court that the Defendant, Robert Pierce, is guilty of the offense of Count II, Sexual Assault, a felony, in violation of Section 45-5-502 Sub (1) and Sub (3)(But 45-5-502(5)(a)(ii) MCA is the age quideline of "less than 14 years) of the Montana Code Annoated, as charged in the States Second Amended Information and as evidenced by the unanimous jury verdict in this case.(Less than 16 years if not necessarily less than 14 years, as instructed)

The District Court must not enter a judgement as a matter of law for one party based on an inconsistant verdict. The only alternative is to order a new trial. Centennial Mgnmnt Servs v Axa Re Vie 196 F.rd 603, 47 Fed R. Ser 3d(Callaghan 1128, 2000 US Dist Lexis 18796. A void thing is no thing; it has no effect whatsoever and no right whatever can be obtained under it or grow out of it. In law, it is the same thing as if the void thing never existed. Lowery v Garfield County 122 Mont 571, 208 F.2d 478. When the answers are inconsistant with each other and one or more is also inconsistant with the general verdict, Judgement must not be entered. MT.R.Civ.P. Rule 49(B)(4).

REASONS FOR GRANTING THE PETITION

According the the United States Constitution, Amendment 13: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Involuntary Servitude - The condition of one forced to labor, for pay or not - for another, by coercion or imprisonment: Blacks Law Dictionary, Ninth Edition: West, page 1493.

Montana Code Annotated 45-5-303 Aggravated Kidnapping:(1) a person commits the offense or aggravated kidnapping if the person knowingly or threatening without lawful authority, restrains another person secreting or threatening(e) to hold in a condition of involuntary servitude.

Mr. Pierce was accused of the the crime, but never duly convicted as charged, however, the Montana Justice system and the Montana Attorney General clearly kidnapped Mr. Pierce, while violating the United Constitutional Amendments 4, 5, 6, 7, 8, 13 and 14.

When the State case started with the accusations being fabricated, witness tampering infected every aspect of the investigation, the witnesses admitted to copying each others police reports and giving false information to investigators police and interviewers, the charges were based on no probable cause and no subject matter jurisdiction, the witnesses admitted to giving perjured testimony and false grooming evidence, the jury convicted Mr. Pierce to a futuristic commission of offenses and the Sentencing was imposed by a judge with no jurisdiction and no probable cause or subject matter to grant judgement and no more authority that any other member of the general public, the charges must be dismissed, the case dropped and the criminal record exonerated

As neither the State Courts, nor the federal Courts would provide a hearing and as neither the State State courts nor the federal courts operated with any authority, with both operating under void judgements, the United States Supreme Court should Grant this Petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert S. Pierce

Date: 16 September 2024